

REMARKS

The Final Office Action mailed on November 10, 2009 has allowed all claims except for claim 2. It is noted that although the Final Action summary and conclusion indicate that all claims except for claim 2 are allowed, the body of the Action repeats the rejections of all claims that was previously made in the Office Action mailed on April 28, 2009. The examiner confirmed in a phone late December 2009 message that this was an error, and that all claims except for claim 2 were allowed. Applicants are grateful for this clarification and for the allowance of all claims except for claim 2.

Claim 2 stands rejected under 35 U.S.C. §112, first paragraph. This rejection is traversed. As best understood, the rejection alleges the claimed range (3 to 22 molar) does not appear in the specification. In response, Applicants assert that where a broad numerical range is disclosed in the original specification, the claiming of a narrower range within the broader range meets the written description requirement (unless another, different, invention is defined by the narrower range). See *In re Wertheim*, 191 USPQ 90, 98 (C.C.P.A. 1976).

Further support for this can be found in the MPEP §2163.05(III) which in discussing *In re Wertheim* explains that the written description in that application of a broad range of between 25% and 60% provided adequate support for a narrower claimed range of between 35% and 60% even though this narrower range was not expressly recited in the specification. MPEP §2163.05 (III). In considering the subject, this section of the MPEP

also notes that the use of the term “at least” in a range without stating an upper limit indicates that there is no upper limit to the range. *Id.*

Thus, in the instant case, because the specification discloses a concentration of at least 3 molar, any range of molar concentrations that is not below 3 molar is supported (including between 3 and 22 molar) (absent evidence that the narrower range and the broader range of the original specification defined different inventions). Because there is no evidence that the claimed range of between 3 and 22 molar is a different invention than the range of at least 3 molar, case law and the MPEP direct that no §112 issue arises and the corresponding rejection must be withdrawn.

For the above reasons, Applicants request reconsideration and allowance of claim 2. Should the Examiner be of the opinion that a telephone conference would aid in the prosecution of the application, or that outstanding issues exist, the Examiner is invited to contact the undersigned. If a Petition under 37 C.F.R. §1.136(a) for an extension of time for response is required to make the attached response timely, it is hereby petitioned under 37 C.F.R. §1.136(a) for an extension of time for response in the above-identified application for

the period required to make the attached response timely. The Commissioner is hereby authorized to charge fees which may be required to this application under 37 C.F.R. §§1.16-1.17, or credit any overpayment, to Deposit Account No. 07-2069.

Respectfully submitted,
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